

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ANTONIO LOMAX,)	
)	Case No. 20 C 7747
Plaintiff,)	
)	Judge Charles R. Norgle
v.)	
)	Magistrate Susan E. Cox
DEFENDANT OFFICER SZCZUR,)	
Star No. 18774)	
)	
Defendant.)	

**DEFENDANT OFFICER SZCZUR'S ANSWER TO PLAINTIFF'S COMPLAINT,
AFFIRMATIVE DEFENSES AND JURY DEMAND**

NOW COMES Defendant Officer Christian Szczur ("Defendant"), by and through one of his attorneys, Max C. Boose, Assistant Corporation Counsel, and for his Answer to Plaintiff's Complaint, Affirmative Defenses and Jury Demand, states as follows:

INTRODUCTION

1. This action is brought pursuant to 42 U.S.C. Section 1983 to redress the deprivation under color of law of Plaintiff's rights as secured by the United States Constitution.

ANSWER: Defendant admits Plaintiff brings this action pursuant to 42 U.S.C. § 1983, but denies any deprivation of Plaintiff's rights.

JURISDICTION & VENUE

2. This Court has jurisdiction of the action pursuant to 28 U.S.C. Sections 1331 and 1367, and venue is proper under 28 U.S.C. Section 1391(b). On information and belief, all parties reside in this judicial district, and the events giving rise to the claims asserted herein occurred within the district.

ANSWER: Defendant lacks information or knowledge sufficient to form a belief as to the truth of the allegation that Plaintiff resides in this judicial district. Defendant admits the remaining allegations in this paragraph.

THE PARTIES

3. Plaintiff, ANTONIO LOMAX, is a resident of the City of Chicago in the County of Cook, Illinois.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

4. Defendant Officer Szczur, Star No. 18774, was at the time of the occurrence a City of Chicago Police Officer. He engaged in the conduct complained of while in the scope of his employment and under color of law. He is sued in his individual capacity.

ANSWER: Defendant admits being employed as a Chicago Police Officer and acting under color of law and within the scope of his employment on October 5, 2020. Defendant further admits Plaintiff sues him in his individual capacity. Defendant denies Plaintiff fully or accurately describes the events of October 5, 2020 and therefore denies the remaining allegations of the above paragraph.

BACKGROUND

5. On October 5, 2020, Antonio Lomax, a middle-aged Black man, was in an alley near 1250 N. Mason Street in Chicago, Illinois.

ANSWER: Defendant admits the allegations of the above paragraph.

6. Defendant Officer Szczur, Star No. 18774, saw Mr. Lomax.

ANSWER: Defendant admits the allegations of the above paragraph.

7. Mr. Lomax was not committing any crime.

ANSWER: Defendants deny Plaintiff has fully and/or accurately stated the events of October 5, 2020 and therefore denies the allegations in this paragraph.

8. Defendant Szczur screamed at Mr. Lomax to raise his hands.

ANSWER: Defendant admits verbally directing Plaintiff to raise and/or show his hands. Defendant denies Plaintiff fully or accurately describes the events of October 5, 2020 and therefore denies the remaining allegations of the above paragraph.

9. Mr. Lomax complied.

ANSWER: Defendant admits the allegations of the above paragraph.

10. Defendant Szczur rushed over and threw Mr. Lomax to the ground.

ANSWER: Defendant denies the allegations of the above paragraph.

11. Mr. Lomax's head banged into the pavement.

ANSWER: Defendant denies the allegations of the above paragraph.

12. Defendant's use of force was excessive and completely unwarranted.

ANSWER: Defendant denies the allegations of the above paragraph.

13. Defendant Szczur searched Mr. Lomax and released him without charges.

ANSWER: Defendant admits Plaintiff was patted down and released without charges. Defendant denies the remaining allegations of the above paragraph.

**COUNT I – 42 U.S.C. Section 1983
Fourth Amendment – Excessive Force**

14. Each of the foregoing Paragraphs is incorporated as if restated fully herein.

ANSWER: Defendant incorporates his responses to each of the foregoing paragraphs as if fully restated herein.

15. The actions of Defendant Officer Szczur, as detailed above, constitutes unreasonable, unjustifiable, and excessive force against Plaintiff; thus, violating Plaintiff's rights under the Fourth Amendment to the United States Constitution.

ANSWER: Defendant denies Plaintiff has fully and/or accurately stated his actions herein and further denies the allegations of the above paragraph.

16. As a result of the Defendant Officer's misconduct described in this Count, Plaintiff suffered injury including physical and emotional harm.

ANSWER: Defendant denies the allegations of the above paragraph.

**COUNT II – 42 U.S.C. § 1983
Fourth Amendment: Unreasonable Seizure**

17. Each Paragraph of this Complaint is incorporated as if restated fully herein.

ANSWER: Defendant incorporates his responses to each of the foregoing paragraphs as if fully restated herein.

18. As described in the preceding paragraphs, Defendant Szczur violated Plaintiff's Fourth Amendment right to be free from unreasonable search and seizure of his property.

ANSWER: Defendant denies the allegations of the above paragraph.

19. The misconduct described in this Count was objectively unreasonable and was undertaken intentionally with willful indifference to Plaintiff's constitutional rights.

ANSWER: Defendant denies the allegations of the above paragraph.

20. The misconduct described in this Count was undertaken with malice, willfulness, and reckless indifference to the rights of others.

ANSWER: Defendant denies the allegations of the above paragraph.

21. As a result of the misconduct described in this Count, Plaintiff has suffered damages, including but not limited to emotional distress, anguish, and financial loss.

ANSWER: Defendant denies the allegations of the above paragraph.

JURY DEMAND

Defendant demands trial by jury.

AFFIRMATIVE DEFENSES

1. Defendant Officer is a government official, namely a police officer, who performs discretionary functions. At all times material to the events alleged in Plaintiff's Complaint, a reasonable officer, objectively viewing the facts and circumstances that confronted said Defendant, could have believed his actions to be lawful, in light of clearly established law and the information that said Defendant possessed. Defendant Officer, therefore, is entitled to qualified immunity as a matter of law. *See Spiegel v. Cortese*, 196 F.3d 717, 723 (7th Cir. 2000).
2. Plaintiff alleges in his complaint that he suffered damages as a result of Defendants' alleged conduct. To the extent Plaintiff failed to mitigate any of his claimed injuries or damages, any verdict or judgment obtained by Plaintiff must be reduced by application of the principle that Plaintiff had a duty to mitigate his claimed injuries and damages, commensurate with the degree of failure to mitigate attributed to Plaintiff by the jury in this case.

Respectfully submitted,

/s/ Max Boose

Max Boose

Assistant Corporation Counsel

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Attorneys for Defendant

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NOTICE OF FILING AND CERTIFICATE OF SERVICE

Christopher R. Smith
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PLEASE TAKE NOTICE that on this 2nd day of March 2021, I have caused to be e-filed with the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division **DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT**, a copy of which is herewith served upon you.

I hereby certify that I have served this notice and the attached document by causing it to be delivered by electronic means to the person named above at the address shown this 2nd day of March 2021.

/s/ Max C. Boose

Max C. Boose
Assistant Corporation Counsel